

REMARKS

Status Summary

The Office Action dated August 4, 2009, has been noted and its contents carefully studied. Pending claims 1, 3-16, 18, 20, and 22-24 stand rejected in this Application. By this Amendment, claims 1, 10, and 13 are amended, with full support for the amendments found in at least paragraphs [0016], [0038] and [0039] and Fig. 1 of the as-filed specification and figures as published. No new matter is added. Reconsideration of the application as amended and based on the remarks set forth hereinbelow is respectfully requested.

Specification

The specification is objected to on pages 4 and 5 of the Office Action as allegedly failing to provide proper antecedent basis for the claimed subject matter. Applicant submits that the claims as amended find full support in the specification in at least paragraphs [0016], [0038] and [0039] and Fig. 1 of the as-filed specification and figures, as published. Reconsideration is respectfully requested.

Claim Rejections

Regarding rejections under 35 U.S.C. § 112

Claims 1, 3-16, 18, 20, and 22-24 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Office Action on page 5 states that "finding available shelf space" and "found shelf space" are not described in the specification and that "the implication of the term is that a search process is involved, but no search algorithm is described and in fact the very concept of searching is not addressed in the specification." Applicant respectfully disagrees. Not every search activity requires a formalized "search algorithm" to encompass a search for an item of interest. Indeed, in paragraph [0038] of the as-filed specification, the application recites "Before shipping the product to the vendor, the supplier will have to ensure that there is space available within the vendor premises." Since the supplier is an outside party with no knowledge of the vendor's processes or premises, to ensure that there is space available requires the supplier to search for the openings within the shelf space

Serial No.: 10/681,916

in the vendor premises. The result of this activity is the location, or finding, of shelf space for which the supplier may then negotiate and/or purchase, and, thus, there is “found shelf space” as a result of this action. Applicant respectfully submits that the claims, as amended, fully support the enablement of the terms encompassed within the claims. Reconsideration is respectfully requested.

Regarding rejections under 35 U.S.C. § 101

Claims 1, 3-16, 18, 20, and 22-24 are rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. Claims 1 and 13 have been amended to recite “a main computer device” within the body of each claim, with support found at least in Fig. 1 of the as-filed drawings, thus embodying the recited system within a concrete device and satisfying at least the second prong of the test enumerated in *In re Bilski*, 2008 U.S. App. LEXIS 22479. Claim 10 has been amended to recite a method embodied within a computer readable storage medium in which found shelf space is reserved for use within vendor facilities, which provides a concrete and tangible step and transforms the indicated shelf space from the display of one tangible article to another tangible article, and is embodied within a particular apparatus or machine. This method step is in accordance with the first and second prongs of the decision of *In re Bilski (id.)*.

Applicant asserts that claims 1, 10, and 13 as amended are now, for the foregoing reasons, in compliance with the statutory requirements of 35 U.S.C. §101. Claims 3-9, 11-12, 14-16, 18, 20, and 22-24 each depend from one of claims 1, 10, and 13 and inherit the amendments of the independent claims. As such, Applicant asserts that each of these claims is in compliance with 35 U.S.C. §101 for the same reasons as independent claims 1, 10, and 13. Reconsideration is respectfully requested.

Regarding rejections under 35 U.S.C. § 103

Claims 1, 3-16, 18, 20, and 22-24 are rejected under 35 U.S.C. §103(a) as being unpatentable over US Patent No. 7,340,419 to Walker et al. (hereinafter “Walker”) in view of “FIELDS AND FULMER” (Non-patent literature cited in form PTO-892, item U) (hereinafter “Fields”). These rejections are respectfully traversed.

Serial No.: 10/681,916

Regarding independent claims 1, 10, and 13, independent claim 1 as amended generally recites “a third subsystem for said suppliers to ensure there is available shelf space as found shelf space available in a vendor premise and for suppliers and vendors to negotiate for required found shelf space, reserving the found shelf space, and the supply and display of said products upon the found shelf space and payment of said fees.” Independent claim 10 as amended generally recites “negotiating with said vendors for desired available shelf space as found shelf space available in a vendor premise, the supply and display of said product and payment for the display and sale of said products, and reserving the found shelf space for the use of the supplier.” Independent claim 13, as amended, generally recites “a third subsystem for suppliers to ensure there is available shelf space as found shelf space available in a vendor premise and comprising permitting the product contact persons to negotiate with said vendor for reserving the found shelf space, the supply and display of said products upon the found shelf space, and payment of said fees required for found shelf space.”

The Walker reference relates generally to the display of items upon the shelves of supermarkets for which a supermarket owner has required a payment from the manufacturer. The Office Action seems to assert that the elements recited in claims 1, 10, and 13 are disclosed in Walker at Col. 2, lines 14-22, Col. 3, lines 3-11 and Col. 8, lines 35-44 and 50-61, however Applicant respectfully submits they are not, especially in light of the amended claims.

At Col. 2, lines 14-22, Walker discloses generally that products are displayed to customers on aisles in supermarkets and that not all products can be displayed in preferred spots due to space limitations. This is the only mention of “space” or “space limitations” in the Walker reference. Walker provides no disclosure or teaching for finding or ensuring that there is available shelf space in the vendor’s premises. At most, Walker provides a disclosure for the lack of shelf space in the vender’s premises due to space limitations of the premises. At Col. 3, lines 3-11, Walker discloses that “it would be advantageous to place the product” in a shelf position, or “slot”, “from the manufacturer who is willing to pay the system the most for that slot.” At Col. 8, lines 35-44 and 50-61, Walker discloses the assignment of customer identifiers for customer tracking and a product database in which entries “may indicate a product offered for sale by, e.g., only a certain chain of stores, but not by others.” In addition, the Office Action

asserts, on Page 4, that “Shelf space sold by prior agreement is reserved shelf space.” Applicants would like to point out that the claims do not recite a prior agreement for shelf space in order to reserve that shelf space. The claims specifically recite that shelf space is only reserved after ensuring that available shelf space has been found and for which the found shelf space has been the subject of a negotiation. This is different than the disclosure found in Walker. The Walker reference does not provide the disclosure for “suppliers to ensure there is available shelf space as found shelf space available in a vendor premise”, “negotiating for required found shelf space”, or for “reserving the found shelf space, and the supply and display of said products upon the found shelf space” as recited in amended claims 1, 10 and 13.

Walker does not provide the disclosure for a supplier ensuring that *available shelf space as found shelf space* is available in a vendor premise because the practice disclosed in Walker is that of a manufacturer determining in what areas of previously purchased shelf space they wish to locate products for display. Since shelf space is limited, all shelf space in Walker is allocated for particular manufacturers based upon which manufacturers will pay the most for the shelf “slots” so that such slots are never available as open shelf space that may later be “found” as the result of a search to ensure that such shelf space may be available for purchase by a supplier, manufacturer, or other interested party. Thus, there is never any available shelf space to be found because the disclosure in Walker shows that all shelf space is allocated and sold in advance to the manufacturer that pays the most for the particular shelf slots. In addition, the entities disclosed in Walker do not provide information on available shelf space as general information to suppliers or manufacturers who would like to search for such open shelf space because, as disclosed in Walker, such entities pre-sell all available shelf space prior to the opening of a location as a means of maximizing income and, thus, do not have any shelf space for listing as generally available. Thus, although Walker discloses that a retailer will display products of manufacturers on the shelves, available shelf space is not one of the products offered by a retailer that may be found by viewing the display of the retailer’s shelves. In other words, a retailer is not offering to sell shelf space since there is no available shelf space, all of the shelf space having been previously sold to manufacturers. Thus, Walker does not disclose at least this feature of independent claims 1, 10, and 13.

Serial No.: 10/681,916

Additionally, Walker provides the disclosure for the viewing of products on shelves, however, there is no disclosure for the *reservation of found shelf space* because there is never any open shelf space to be found, or reserved, as all shelf space is sold by prior agreement between the retailer and manufacturers. In addition, although Walker does disclose that the retailer desires to sell shelf slots to the manufacturer who is willing to pay the most, Walker discloses only that there may be an auction by the retailer to determine which manufacturer will pay the most. Once the bids have been offered by the manufacturers in response to a request for bid letter from the retailer, the retailer accepts the highest amount and allocates those slots to that manufacturer. *Negotiation* requires some give and take between the two parties to the negotiation, such that once a price is offered a counter-offer may be made, with responses continuing back and forth until a mutually agreed upon price is declared. There is no disclosure for this process in Walker, and, in fact, the desired result in Walker is not a negotiation, where a price may be lowered or modified, but rather the highest price the retailer can achieve from the manufacturers involved without the possibility of amendment or loss. As a result, Walker does not provide the disclosure for the negotiation for “required found shelf space” as recited. Thus, Walker does not provide the disclosure for these recited elements in amended independent claims 1, 10, and 13.

To remedy the lack of Walker, the Office Action looks to the Fields reference, however, Fields is likewise silent with regard to the recited elements of claims 1, 10, and 13 as amended. Fields discloses that paying for shelf space has become a standard practice in the display of items on supermarket shelves. The disclosure in Fields is for the payment of upfront fees in order for a manufacturer to be allowed to place their product on the shelves of warehouses or on display on the shelves within the supermarkets themselves. On page 2, Fields discloses “*Often, upfront cash is only the beginning. When meatpacker Don Burnett approached a major California chain about stocking his microwaveable meals, the company’s buyers demanded \$5,000 per item for warehouse costs, another \$5,000 for quarterly newspaper ads and \$86,000 in free samples.*” This exclusionary tactic does not disclose the process of ensuring there is available shelf space, because the shelf space is all pre-sold and is never generally available. In addition, Fields does not disclose negotiating for such available shelf space, or reserving the available shelf space as

Serial No.: 10/681,916

found shelf space, as recited in claims 1, 10, and 13, again, because there is no process of negotiation when prices are pre-determined and demanded by the retailer. Additionally, there is no available shelf space to be found and no way to ensure there is available shelf space when all shelf space is pre-sold. Thus, Fields does not provide the disclosure necessary to remedy the shortcomings in the Walker reference. Therefore, the Walker and Fields references, either taken together or in combination, do not provide the disclosure necessary to render claims 1, 10, and 13 obvious. Reconsideration and allowance are respectfully requested.

Claims 3-9, 11-12, 14-16, 18, 20, and 22-24 are likewise allowable by virtue of their dependency on one of claims 1, 10, or 13. Moreover, each of these claims includes additional features that further distinguish the cited art. For example, claim 7 recites “said first subsystem includes an account section for maintaining account of products shipped, cost of shelf space, and sales information.” Because Walker and Fields, either separately or in combination, disclose only that prices for any and all shelf slots are pre-determined by a bidding process (in Walker) or a demand process (in Fields) there is no disclosure for the maintenance of the cost of shelf space in the systems disclosed. Thus, the combination of Walker and Fields does not provide the disclosure to render at least claim 7 obvious. Reconsideration and allowance of the remaining dependent claims are respectfully requested.

Applicant therefore submits that in light of the amendments herein all pending claims are patentable over the prior art of record, and reconsideration and allowance of all pending claims are accordingly requested.

Serial No.: 10/681,916

CONCLUSION

Should there be any minor issues outstanding in this matter, the Examiner is respectfully requested to telephone the undersigned attorney. Early passage of the subject application to issue is earnestly solicited.

DEPOSIT ACCOUNT

The Commissioner is hereby authorized to charge any underpayment or credit any overpayment associated with this filing to Deposit Account Number 50-3976. If an extension of time for this paper is required, petition for extension is herewith made.

Respectfully Submitted,

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